

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
No. 2:15-cv-00013-D

JANICE ANN KRAUSS,

Plaintiff,

v.

CAROLYN W. COLVIN,  
Acting Commissioner of Social Security,

Defendant.

ORDER

Plaintiff's counsel filed a motion for approval of attorney's fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), in the amount of \$11,850.75. Attorney's fees under section 206(b) are paid from past-due benefits awarded to a successful claimant. 42 U.S.C. § 406(b). Defendant filed a response, stating that under Gisbrecht v. Barnhart, 535 U.S. 789 (2002), it is the duty of the Court to determine a reasonable fee. Plaintiff has previously been awarded attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, in the amount of \$4,200.00 (ECF No. 33).

It appearing, however, that Plaintiff's counsel was, pursuant to the fee agreement between Plaintiff and her counsel (record Transcript at 102), limited to fees under 42 U.S.C. §§ 406(a) and 406(b) to no more than \$6,000.00 total,

It is ORDERED that if Plaintiff's counsel has been paid fees under a fee petition under 42 U.S.C. § 406(a), or if Plaintiff has filed or intends to file for fees under that section, then Plaintiff's counsel's request for fees under 42 U.S.C. § 406(b) is denied. However, if Plaintiff has not received fees under 42 U.S.C. § 406(a), and Plaintiff has not filed and does not intend to file for fees under that section, then Plaintiff's counsel be awarded fees under 42 U.S.C. § 406(b)

in the amount of \$6,000, and will refund to Plaintiff the smaller award between this amount and the EAJA award. If an award is claimed from the Commissioner under 42 U.S.C. § 406(b) pursuant to this Order, then Plaintiff is restricted from filing for fees from the Commissioner pursuant to 42 U.S.C. § 406(a) now or at any time in the future.

SO ORDERED. This 24 day of October 2016.

  
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JAMES C. DEVER III  
Chief United States District Judge